

[A. LOIZOU, J.]

1975
April 28

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOSIF K. GEORGHIADES AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

IOSIF K.
GEORGHIADES
AND ANOTHER
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(Cases Nos. 363/74 & 364/74).

Public Officers—Promotions—Confidential reports—Head of Department delegating his countersigning authority under General Order II/2.9—Whether disqualified from making recommendations to the Public Service Commission when the latter is about to take a decision involving the determination of the merits of candidates for promotion—Section 44 (3) of the Public Service Law, 1967 (Law 33 of 1967).

Public Officers—Promotions—Waiting list—Placing of a candidate on waiting list—Whether it creates an acquired situation in favour of the candidate and whether there can be a departure from the list—Existence of cogent reasons for departure from previous selection in the instant case.

Public Officers—Promotions—Matters to be taken into consideration—Every relevant factor having been taken into consideration in this case—The fact that the contents of the most recent confidential report has tipped the scales in favour of the interested party does not invalidate the sub judice decision—Seniority—Principle on which it prevails—It could not prevail in this case in view of the recommendations of the Head of Department and the contents of the confidential reports—Recommendations of Head of Department—Fact that the respondent Public Service Commission agreed with them does not mean that they did not carry out a proper inquiry—Moreover sub judice decision duly and adequately reasoned.

Confidential reports—Countersigning authority—Delegation of.

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Head of Department—Recommendations—In cases where specialised knowledge and ability are required—A most vital consideration which should not be lightly disregarded.

Seniority—Not the decisive factor that governs promotions—Principles on which it prevails

Waiting list—Placing candidates for promotion on waiting list—Departure from waiting list.

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The applicants in these consolidated recourses challenge the decision of the respondent Public Service Commission to second to the temporary post of Assessor (Income Tax) the interested party.

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Counsel for the applicants contended:

- (a) That the Head of Department having delegated his countersigning authority (under General Order II/2.9) on the confidential reports to the Assistant Director, could not himself make recommendations regarding the filing of the vacant post. 15
- (b) That the placing of the applicant (in recourse 364/74) on the waiting list, about a year prior to the *sub judice* decision, has created in his favour an acquired situation and there could be no departure from it, except if special reasons were given both by the respondent Commission and the Head of Department 20
- (c) That the reasoning of the decision is illegal as the respondent Commission decided the case on one of the Confidential Reports, that of 1973 and not on the whole material before them. 25
- (d) That the respondent Commission did not carry out a proper inquiry into the respective claims for promotion of the two applicants and the interested party, but limited themselves to endorsing the recommendation of the Head of Department. 30
- (e) That the reasoning is insufficient as the respondent Commission had to explain why they disregarded the seniority of both applicants over the interested party and the additional qualifications of applicant Hji Gregoriou (Recourse No. 364/74). 35

5 In taking the *sub judice* decision the respondent commission
took into consideration the recommendations of the Head of
the Department, which was in favour of the interested party,
and also made a comparison of the last annual confidential
report (that of 1973) on the candidates; and gave “due con-
sideration to the merits, qualifications, seniority, service and
experience of all the officers as shown in their personal
files and in their annual confidential reports.....”. And in
10 taking the decision to depart from the waiting list the respondent
Commission stated the following:

15 “ In view of the long time that has elapsed since the placing
on the waiting list of the officer referred to above and as
one of the Members of the Commission was not holding
office when Mr. Hji Gregoriou was placed on the waiting
list in May, 1973, and as in the meantime another Annual
Confidential Report has been submitted in respect of all the
candidates, the Commission decided to consider the matter
afresh”.

20 *Held, (I) with regard to contention (a):*

A Head of Department is not disqualified from making re-
commendations merely because he has delegated his counter-
signing authority, nor can it be said that he cannot make useful
recommendations in such a case.

25 *Held, (II) with regard to contention (b):*

30 1. The departure from the waiting list was the proper course
to be followed, leaving aside any other consideration, once
there was a change in the composition of the collective organ
through the presence of a member who did not take part at a
past meeting on the matter, the organ could not take a valid
decision at its last relevant meeting, except if the whole process
was repeated fully *ab initio* (See *Panayiotou and Others v. The
Republic* (1972) 3 C.L.R. 337 at pp. 339-340 and the Authorities
therein cited).

35 2. The giving, by the Head of the Department, of cogent
reasons for his recommendation which were consistent with and
supplemented by the material in the file and in particular the
last confidential reports on all the candidates; and the specific
reference by the Commission to the confidential reports for
1973, which constituted a new factor that came into existence
40 since they previously placed on the waiting list the said appli-

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cant, along with the making of a fair and accurate comparison of the two reports for 1973, constituted cogent reasons for changing from their previous selection.

Held, (III) with regard to contention (c):

Though the whole career of a candidate has to be examined and all the factors referring to the quality, ability and merits of a candidate as a civil servant, and not those of a certain period or a certain category have to be taken into consideration the fact that the contents of the most recent confidential report has tipped the scales in favour of the interested party does not invalidate the subject decision. This was a new factor which had to be taken into consideration and weighed together with the rest of the material before them, and there is as clear reasoning as could be, in the circumstances.

Held, (IV) with regard to contentions (d) and (e):

(1) A proper inquiry, in the circumstances, was definitely carried out by the respondent Commission and the recommendation of the Head of Department in cases such as these, where specialized knowledge and ability are required for the performance of certain duties, has been stated to be a most vital consideration which should weigh with the Public Service Commission in coming to a decision and should not be lightly disregarded (see *Theodossiou* and *The Republic*, 2 R.S.C.C. 44 at p. 48).

(2) Seniority is not the decisive factor that governs promotions, but one that should be duly taken into consideration and should only prevail if all other things were equal. This, however, does not appear to be the case in the light of the recommendation of the Head of the Department and the contents of confidential reports (See *Lardis v. The Republic* (1967) 3 C.L.R. 64 at p. 71, *Partellides v. The Republic* (1969) 3 C.L.R. 480). Furthermore, the *sub judice* decision, and that includes the disregard of the seniority of the applicant over the interested party, is duly and adequately reasoned.

(3) It has not been established that there existed such striking superiority over the interested party, as to lead one to the conclusion that the *sub judice* decision was taken in excess or abuse of powers.

Application dismissed.

Cases referred to:

Panayiotou and Others v. The Republic (1972) 3 C.L.R. 337, at pp. 339-340;

Theodossiou and The Republic, 2 R.S.C.C. 44 at p. 48;

5 *Lardis v. The Republic* (1967) 3 C.L.R. 64 at p. 71;

Partellides v. The Republic (1969) 3 C.L.R. 480.

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Recourses.

10 Recourses against the decision of the respondent Public Service Commission whereby the interested party was seconded to the temporary post of Assessor (Income Tax) in preference and instead of the applicants.

K. Talarides, for the applicants.

A. Angelides, for the respondent.

Cur. adv. vult.

15 The following judgment* was delivered by:-

A. LOIZOU, J.: These two recourses have been heard together as the applicants challenge thereby the same decision of the respondent Commission by which Antonios D. Zarkas was seconded to the temporary post of assessor (Income Tax) with
20 effect from the 1st May, 1974.

The *sub judice* decision was published in the official Gazette of the Republic of the 12th July, 1974, under Notification No. 1213 and both recourses having been filed on the 20th September, 1974, satisfy the mandatory period of seventy five
25 days, provided for, in Article 146.3 of the Constitution.

The respondent Commission at its meeting of the 10th April, 1974 considered the filling of the consequential vacancy in the temporary ordinary post of assessor created as a result of the promotion of Mr. Gr. Mateas to the corresponding permanent
30 post. The relevant minutes of the meeting read as follows:-

“ The Director of the Department of Inland Revenue stated that the vacancy referred to above was intended for the Income Tax Office.

* For final judgment on appeal see *Hadjigregoriou v. Republic* (P.S.C.) at p. 477 in this Part, *post*.

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The Director of the Department added that, on merits, he considered Mr. A.D. Zarkas as the best; his general performance in his work is higher than that of the other candidates; he is in a position to carry out higher duties with ease. In view of the above, the Director of the Department recommended Mr. Zarkas for promotion. 5

The Commission observed that in the last Annual Confidential Report for the year 1973, Mr. Zarkas was assessed mostly as 'very good' and in some cases 'excellent'; his 'accuracy' and 'devotion to duty' were assessed as 'excellent'. 10
In the case of Mr. A. Hji Gregoriou, who was placed on the waiting list in May, 1973, the said officer was assessed mostly as 'very good'; his 'adaptability' and 'initiative' was assessed as 'good'.

After considering all the above and after giving due consideration to the merits, qualifications, seniority, service and experience of all the officers serving in the post of Assistant Assessor, as shown in their Personal Files and in their Annual Confidential Reports, and, having regard to the recommendation made by the Director of the Department, the Commission decided that Mr. A. D. Zarkas was on the whole the best and that he be seconded to the temporary (Ord.) post of Assessor (Income Tax) w.e.f. 1.5.74". 15
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The countersigning officer in respect of all confidential reports for the two applicants and the interested party is A. Strovolides, the Assistant Director of the Department of Inland Revenue. This is obviously done—and there is no dispute about it—in pursuance of General Order II/2.9 which reads:—“Confidential reports not prepared by the Head of Department will be countersigned by him if he knows the officer concerned well enough to have formed an opinion of his capabilities and conduct. If not—and particularly in larger Departments which are dispersed over the Island—the Head of Department will delegate countersigning authority to a responsible senior officer who knows the officer concerned well enough to perform this function usefully and with competence”. 25
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The first ground of law relied upon by the applicants is that the Director of the Department having delegated his countersigning authority on the confidential reports to the Assistant Director, could not himself make recommendations regarding the filling of the vacant post. 40

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5 In this respect it has been argued that the recommendations
of the Head of the Department which must be taken into con-
sideration in cases of promotion as provided by section 44 (3)
of the Public Service Law, 1967, must be based on his personal
10 knowledge regarding the work of the officer concerned and
that if such Head of Department has delegated, as in the present
case, his authority, he is deemed not to be in a position to make
useful recommendations; consequently, he must convey to the
Public Service Commission the recommendations of the officer
10 who has received authority to countersign confidential reports.

15 In my view, such delegation of authority on the one hand
and the making of recommendation on the other hand when a
decision by the respondent Commission is about to be taken
involving the determination of the merits of candidates, are two
20 different matters. A Head of a Department is not disqualified
from making such recommendations merely because he has
delegated his countersigning authority, nor can it be said that
he cannot make useful recommendations in such a case. On
the contrary, he has the advantage of forming, *inter alia*, his
25 views, on the basis of the material in the file that comes from
responsible senior officers who know the candidates well enough
to countersign confidential reports and perform such function
usefully. In the present case, a comparison of the confidential
reports and in particular those for 1973, shows that the re-
commendations of the Head of the Department corresponded
to the material in the file.

30 About a year prior to the *sub judice* decision the respondent
Commission filled a number of vacancies in the Department of
Inland Revenue. After the selection was made, the Director of
the Department informed the respondent Commission (enclosure
6 in Recourse No. 364/74) that he hoped that an additional
vacancy in the post of assessor would be created soon after,
so, he requested that an additional officer be placed on the
35 waiting list and recommended Andreas Hji Gregoriou, applicant
in Recourse No. 364/74, "having regard to his merits and educa-
tional qualifications". The Commission thereupon decided and
placed this officer on the waiting list for appointment to the
post of assessor, in due course, having found him, on the whole,
to be the next best candidate.

40 It has been the contention of counsel for the applicant, and
this constitutes a ground of law in respect of Recourse No.
364/74 only, that the placing of the applicant on the waiting list

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has created in his favour an acquired situation and there could be no departure from it, except if special reasons were given both by the respondent Commission and the Head of the Department.

Before answering this proposition, let us see what the approach of the respondent Commission was to this matter. Their minutes (enclosure 4) read:—

“ In view of the long time that has elapsed since the placing on the waiting list of the officer referred to above and as one of the Members of the Commission was not holding office when Mr. Hji Gregoriou was placed on the waiting list in May, 1973, and as in the meantime another Annual Confidential Report has been submitted in respect of all the candidates, the Commission decided to consider the matter afresh”.

This was the proper course to be followed. Leaving aside any other consideration, once there was a change in the composition of the collective organ through the presence of a member who did not take part at a past meeting on the matter, the organ could not take a valid decision at its last relevant meeting, except if the whole process was repeated fully *ab initio*. (See *Panayiotou and Others v. The Republic* (1972) 3 C.L.R. 337, at pp. 339–340 and the authorities therein cited).

So far as the specific reasoning required in such circumstances is concerned, both for the different recommendation made by the Head of the Department and the new selection by the respondent Commission, the answer is to be found, once again, in their minutes which have been quoted earlier in this judgment. The Director of the Department gives cogent reasons for his recommendation which are consistent with and supplemented by the material in the file and in particular the last confidential reports on all three candidates. The respondent Commission, on the other hand, specifically refers to the confidential reports for 1973 which constitute a new factor that came into existence since they previously placed on the waiting list applicant Hji Gregoriou; they make a fair and accurate comparison of the two reports which again, in my view, constitute cogent reasons for changing from their previous selection. This conclusion answers also the 5th ground of law relied upon by the applicants which is to the effect that the aforesaid reasoning is illegal, as the respondent Commission decided the case on one confidential

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report, that of 1973, and not on the whole material before them. It is true that in determining the merits of civil servants, whether for the purpose of secondment on merit or promotion, the whole career of a candidate has to be examined and all the factors referring to the quality, ability and merits of a candidate as a civil servant, and not those of a certain period or of a certain category have to be taken into consideration. (See Conclusions from the Case Law of the Greek Council of State (1929-1959), p. 355 and the decisions of the Greek Council of State mentioned therein).

In the present case it is obvious that the respondent Commission took into consideration, as stated in their minutes, every relevant factor and not only the confidential reports for the year 1973. The fact that the contents of these reports, that is to say the most recent ones on which the countersigning officer is the same person and who agrees with the assessments made therein by the reporting officers, has tipped the scales in favour of the interested party, does not invalidate the subject decision. This was a new factor which had to be taken into consideration and weighed together with the rest of the material before them, and there is as clear reasoning as could be, in the circumstances.

It remains now to consider two more grounds of law relied upon by the applicants, which may conveniently be taken together. They are to the effect that the respondent Commission did not carry out a proper inquiry into the respective claims for promotion of the two applicants and the interested party, but limited themselves to endorsing the recommendation of the Head of the Department, and that the reasoning is insufficient, as they had to explain why they disregarded the seniority of both applicants over the interested party and the additional qualifications of applicant Hji Gregoriou.

I am afraid neither of these two grounds of law can succeed. A proper inquiry, in the circumstances, was definitely carried out by the respondent Commission and the recommendation of the Head of the Department in cases as these in hand where specialized knowledge and ability are required for the performance of certain duties has been stated to be a most vital consideration which should weigh with the Public Service Commission in coming to a decision and should not be lightly disregarded. (Vide *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44 at p. 48).

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The seniority of the candidates was together with their qualifications before the respondent Commission.

The interested party first entered the Government Service as Junior Assistant Assessor, 2nd Grade in 1965 and climbed up to the post of Assistant Assessor, on secondment on 15.6.1968 and permanently on 15.11.1970. Applicant Georghiades entered the Government Service in 1963, was seconded to the post of Assessor on 15.6.1968 and promoted to that post permanently as from 15.4.1969. Applicant Hji Gregoriou entered the Government Service as Assistant Assessor on a temporary basis in 1968 and was promoted permanently to that post on 15.4.1969.

Seniority is not the decisive factor that governs promotions, but one that should be duly taken into consideration and should only prevail if all other things were equal. This, however, does not appear to be the case, in the light of the recommendation of the Head of the Department and the contents of the confidential reports (see *Lardis v. The Republic* (1967) 3 C.L.R. p. 64 at p. 71. Also, *Partellides v. The Republic* (1969) 3 C.L.R. 480). Furthermore, as already stated, the *sub judice* decision, and that includes the disregard of the seniority of the applicants over the interested party, is duly and adequately reasoned.

In conclusion, I would like to say that it has not been established that there existed such striking superiority over the interested party, as to lead me to the conclusion that the *sub judice* decision was taken in excess or abuse of powers.

For all the above reasons the present recourse is dismissed, but in the circumstances there will be no order as to costs.

Application dismissed.
No order as to costs.